

- 5 -

REMARKS

Preliminary amendment to the pending claims

Claims 1-44 are pending and subject to restriction requirement in the patent application. With entry of the presently introduced claim amendments, claims 1-20, 22-25 and 36-39 have been canceled without prejudice to subsequent renewal or future prosecution. Claims 21, 26, 29, 31, 32 and 40 have been amended to replace the previously recited "reactive oxygen species" with a specific reactive oxygen species, "ozone." Evidently, no new matter has been introduced by these claim amendments.

The Restriction Requirement

The instant Office communication requests Applicants to make an election of claims for examination on the merit. Specifically, it was alleged in the Office communication that the pending claims encompass three inventions that do not share the same general inventive concept, I (claims 1-20), II (claims 21-30) and III (claims 31-44).

Applicants respectfully traverse the restriction requirement because at least Group II claims and Group III claims clearly share the same technical feature that provides unity of invention. Specifically, both Group II and Group II are based on the production of reactive oxygen species by activated neutrophils. With the present preliminary claim amendment, the common technical feature shared by the two groups has been further defined to be production of ozone by activated neutrophils. Such a technical feature is certainly not previously known in the art. In addition to the common novel

- 6 -

technical feature (i.e., assaying ozone production by neutrophils), all the other claim elements present in Group II claims are also present in Group III claims. A cursory comparison between independent claim 21 and independent claim 31 will reveal that, compared to claim 21, claim 31 merely additionally recite contacting neutrophils with a test agent prior to assaying ozone production by the neutrophils. This additional element certainly does not deprive Group III claims of an unity with Group II claims. Accordingly, Applicants respectfully request that the restriction between Group II and Group III be withdrawn, and that the claims encompassed by these two groups be rejoined.

Subject to the above traversal, Applicants hereby elect Group II (claims 21 and 26-30) for further examination in the subject application. Applicants additionally make the following species elections: indigo carmine for the species of chemical probe; and mass spectrometry for the species of detection method. With the present claim amendment, the requirement for species election with regard to the previously recited reactive oxygen species is moot. It is noted that claims 21 and 26-30, as well as claims 31-35 and 40-44 if Group III is rejoined with Group II, read on the presently elected invention.

\*\*\*

If a telephone conference would expedite prosecution of this application, please telephone the undersigned attorney at 858-784-2937. If there are any additional fees (or overpayments) associated with this Response, or any Response associated with

- 7 -

this application, the Director is hereby authorized to charge (or credit) our Deposit Account No. 19-0962.

Respectfully submitted,

August 27, 2008

Date



Hugh Wang, Reg. No. 47,163

THE SCRIPPS RESEARCH INSTITUTE  
10550 North Torrey Pines Road  
Mail Drop TPC 8  
La Jolla, California 92037  
(858) 784-2937